

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
Eastern Division**

PHILIPS LIGHTING NORTH AMERICA  
CORPORATION and PHILIPS LIGHTING  
HOLDING B.V.

Plaintiffs,

v.

HOWARD INDUSTRIES, INC. d/b/a  
HOWARD LIGHTING

Defendant.

C.A. No. 2:18-cv-12-KS-MTP

---

**DEFENDANT HOWARD INDUSTRIES, INC. D/B/A HOWARD LIGHTING’S MOTION  
FOR JUDGMENT ON THE PLEADINGS PURSUANT TO FED. R. CIV. P. 12(c)**

COMES NOW, the Defendant, Howard Industries, Inc. d/b/a Howard Lighting (“Howard”) in the above styled and numbered cause of action and submits this, Motion for Judgment on the Pleadings Pursuant to Fed. R. Civ. P. 12(c), and would show unto this Honorable Court that Plaintiffs Philips Lighting North America Corporation and Philips Lighting Holding B.V.’s (“Philips Lighting”) Complaint fails to state a claim of infringement of U.S. Patent No. 6,250,774 (the “’774 patent”) upon which relief can be granted, and that judgment should be entered in favor of Howard on Count Five of the Complaint.

Philips Lighting fails to state a claim for injunctive relief from the alleged infringement of the ’774 patent because the ’774 patent has already expired. Philips Lighting is further precluded from seeking pre-suit damages from the alleged infringement of the ’774 patent for failure to give Howard actual or constructive notice of the alleged infringement before commencement of this action pursuant to 35 U.S.C. § 287(a). In addition, Philips Lighting is not entitled to post-suit damages because the ’774 patent expired before both the filing and the

service of the Complaint. Therefore, Philips Lighting may not recover any relief from Count Five of the Complaint as a matter of law.

For these reasons, more fully set forth in the accompanying Memorandum, Howard requests that Philips Lighting's claim of infringement of the '774 patent be dismissed with prejudice, and that judgment be entered in favor of Howard on Count Five of the Complaint.

RESPECTFULLY SUBMITTED, this 8th day of May, 2018.

/s/ Richard Lewis Yoder, Jr.  
Richard L. Yoder MSB # 6640  
Richard L. Yoder, Jr. MSB #100312  
GILCHRIST SUMRALL YODER YODER &  
LEGGETT, PLLC  
415 North Magnolia Street, Suite 400 (39440)  
P.O. Box 106  
Laurel, MS 39441  
T: (601) 649-3351  
F: (601) 426-9625  
lewyoder@laurellaw.com

David C. Radulescu (*pro hac vice*)  
Etai Lahav (*pro hac vice*)  
RADULESCU LLP  
The Empire State Building  
350 Fifth Avenue, Suite 6910  
New York, NY 10118  
T: (646) 502-5950  
F: (646) 509-8117  
david@radip.com  
tigran@radip.com

***Counsel for Defendant Howard Industries, Inc.  
d/b/a Howard Lighting***

**CERTIFICATE OF SERVICE**

I, Richard Lewis Yoder, Jr., of the law firm Gilchrist Sumrall Yoder Yoder & Leggett, PLLC, do hereby certify that a copy of the foregoing document has been provided via the Electronic Filing System to the following:

J. Stephen Kennedy (MS Bar No. 100040)  
BAKER, DONELSON, BEARMAN CALDWELL & BERKOWITZ, PC  
100 Vision Drive, Suite 400  
Jackson, MS 39211  
T: (601)351-2400  
skennedy@bakerdonelson.com

Jeremy P. Oczek (*pro hac vice*)  
BOND, SCHOENECK & KING, PLLC  
200 Delaware Avenue  
Buffalo, New York 14202  
T: (716)416-7037  
jpoczek@bsk.com

Dated: May 8, 2018

Respectfully submitted,

/s/ Richard Lewis Yoder, Jr.  
Richard L. Yoder, MSB #6640  
Richard Lewis Yoder, Jr., MSB #100312  
**GILCHRIST SUMRALL YODER  
YODER & LEGGETT, PLLC**  
415 North Magnolia, Suite 400  
P.O. Box 106  
Laurel, Mississippi 39441-0106  
(601) 649-3351

*Attorneys for Defendant  
Howard Industries, Inc*